

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE: SUMMIT CARBON SOLUTIONS, LLC	DOCKET NO. HLP-2021-0001
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**ORDER ADDRESSING MOTION FOR RECONSIDERATION AND PETITIONS TO INTERVENE**

**BACKGROUND**

On January 28, 2022, Summit Carbon Solutions, LLC (Summit Carbon), filed a petition for a hazardous liquid pipeline permit with the Utilities Board (Board) to construct, operate, and maintain approximately 681 miles of 6- to 24-inch diameter pipeline for the transportation of liquefied carbon dioxide within the state of Iowa.

On July 14, 2022, the Board issued an order addressing a motion to require Summit Carbon to provide certain additional exhibits as part of its petition. On August 3, 2022, Summit Carbon filed a request for limited reconsideration of the July 14, 2022 order. On September 2, 2022, the Board issued an order requesting additional information be provided regarding federal preemption issues raised by Summit Carbon relating to discharge plume model and risk assessment (Exhibit L1) and a copy of Summit Carbon's emergency response plan (Exhibit L2).

On October 7, 2022, the Board issued an order scheduling an oral argument to address federal preemption of safety issues raised regarding Exhibits L1 and L2 and

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federal preemption in general. In the October 7, 2022 order, the Board set a filing date of November 10, 2022, for briefs. On November 21, 2022, Summit Carbon filed a motion requesting the Board allow reply briefs. On November 22, 2022, the Board issued an order setting November 30, 2022, as the date for filing reply briefs.

On November 30, 2022, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed a motion to extend the deadline for filing reply briefs and requesting clarification on the response procedures for motions going forward. In its motion, OCA requested an extension of the November 30, 2022 reply brief deadline set in the November 22, 2022 order.

In addition to requesting the extension, OCA requested the Board provide clarification regarding the response time to motions the Board will follow going forward in the proceeding. OCA stated the Board's rules at 199 Iowa Administrative Code (IAC) 7.12 allow for the response to be filed no later than 14 days from the date of the motion, unless the time period is modified by the Board. OCA acknowledged there will be circumstances that will require a shortened response time period. OCA recommends the Board follow the requirements in 199 IAC 7.12.

Briefs were filed by Summit Carbon; OCA; Wolf Carbon Solutions US, LLC (Wolf Carbon); Navigator Heartland Greenway, LLC (Navigator); the Shelby County Board of Supervisors (Shelby BOS); the Hardin County Board of Supervisors (Hardin County BOS); Sierra Club; Iowa Farm Bureau Federation (Farm Bureau); George G. Cummins; and Mary, Jamie, and Carmen Moser (Mosers).

On December 13, 2022, an oral argument was held regarding the issue of federal preemption in relation to Exhibits L1 and L2 and federal preemption in general. Summit

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Carbon, OCA, Wolf Carbon, Navigator, Shelby BOS, Sierra Club, Farm Bureau, and Mr. Cummins appeared and participated in the oral argument.

### **OCA MOTION AND REQUEST FOR CLARIFICATION**

OCA and Summit Carbon filed reply briefs on December 5, 2022. The Board will accept both reply briefs as timely filed.

With regard to OCA's request for clarification of response time to motions deadlines, the Board issued the order granting the motion to file reply briefs so the parties would know they were being granted the opportunity to file reply briefs. Rule 199 IAC 7.12 allows the Board to shorten the time for responses to a motion, which gives the Board the flexibility to respond quickly to a motion as circumstances require. The Board determined no responses were necessary to the motion to file a reply brief and issued the November 22, 2022 order. With regard to future motions, the Board will follow the requirements in 199 IAC 7.12 for responses unless the circumstances require the Board to shorten or lengthen the time for filing a response.

### **BOARD ANALYSIS**

In briefing and at the oral argument, Summit Carbon, Wolf Carbon, and Navigator asserted that federal preemption precludes the Board from requiring the information in Exhibits L1 and L2 to be provided. Shelby County BOS, Hardin County BOS, Sierra Club, Farm Bureau, Mr. Cummins, and the Mosers argued federal preemption does not apply and the Board can obtain Exhibits L1 and L2. In addition to the arguments about the information in Exhibits L1 and L2, arguments were made regarding federal preemption in general.

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The Board has reviewed the briefs and the arguments made at the oral argument and has determined that it will not require Exhibits L1 and L2 to be filed as petition exhibits by Summit Carbon. OCA requested the exhibits to be included in Summit Carbon's petition rather than as evidence to be included in testimony and exhibits. The Board finds that the information in Exhibits L1 and L2 is not necessary as part of the petition filed by Summit Carbon.

Discovery is the usual mechanism parties use to obtain this type of information, which, in turn, could assist parties in preparing their evidence. Issues regarding relevancy and preemption can then be made to the Board at the time the evidence is filed. In addition, the Board does not consider it necessary or good procedure to try and address federal preemption in general prior to seeing the evidence that is presented.

The Board recognizes that it is preempted from setting safety standards that are clearly under the jurisdiction of the United States Department of Transportation. However, it is not clear where the line between safety standards and other statutory requirements under federal law and in Iowa Code chapter 479B is to be drawn. The Board considers those to be evidentiary and legal questions that should be addressed when the Board makes its decision regarding Summit Carbon's petition.

Summit Carbon bears the burden of proving its case to the Board, and Summit Carbon will determine what evidence is required to meet this burden. Other parties may then file their own evidence in their direct cases and in response to Summit Carbon's evidence.

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Based upon the above discussion of the issues regarding the Board's July 14, 2022 order, the Board will grant Summit Carbon's August 3, 2022 motion for reconsideration as it relates to Exhibits L1 and L2.

### **PETITIONS TO INTERVENE**

On November 1, 2022, Charles Isenhart filed a petition to intervene. Mr. Isenhart states he will be representing himself in the matter. Mr. Isenhart states he is a state representative from Dubuque County, Iowa. Mr. Isenhart asserts he has a public policy interest in the environmental and climate impacts of the project based upon his legislative experience. Mr. Isenhart states he intends to submit prefiled testimony, participate in hearings before the Board, and cross-examine other parties' witnesses. No objection to Mr. Isenhart's petition to intervene has been filed.

On November 21, 2022, the Kossuth County Board of Supervisors (Kossuth County BOS), by and through Timothy J. Whipple, petitioned for intervention. Kossuth County BOS states Iowa Code § 331.301(1) grants it the authority to "exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents." Kossuth County BOS states, pursuant to Iowa Code § 479B.7, governmental entities whose rights or interests may be affected have the right to object to a proposed hazardous liquid pipeline. Lastly, Kossuth County BOS states it has adopted a comprehensive plan and zoning ordinance regulating the use of land in the county pursuant to Iowa

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Code chapter 335. Kossuth County BOS states it desires to ensure Summit Carbon complies with the requirements of Iowa Code § 479B.5(7) and its local policies and land use requirements. Kossuth County BOS asserts it has a unique interest in this proceeding and no other party can adequately represent its interests. No objection to Kossuth County BOS' petition to intervene has been filed.

The Board's subrule at 199 IAC 7.13(3) provides that "[a]ny person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the board...." In determining whether to grant intervention, the Board shall consider factors including, but not limited to, the prospective intervenor's interest in the subject matter of the proceeding, the effect a final decision in the proceeding may have upon the prospective intervenor's interest, and the extent to which the prospective intervenor may be expected to assist in the development of a sound record. *Id.*

The Board finds that the prospective intervenors have an interest in the subject matter of the proceeding, the final determination in the docket may have an adverse effect on the prospective intervenors' interest, and the prospective intervenors may reasonably be expected to assist with the development of a sound record. Applying the 199 IAC 7.13(3) factors, the Board finds Mr. Isenhardt and Kossuth County BOS have stated sufficient grounds for the Board to grant their petitions to intervene. The Board reminds those parties who are not attorneys that they are held to the same standard as an attorney when engaging in the Board's process.

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**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

1. The request for extension of deadline for reply briefs filed by the Office of Consumer Advocate, a division of the Iowa Department of Justice, is moot.
2. The motion for reconsideration filed by Summit Carbon Solutions, LLC, on August 3, 2022, is granted, and the July 14, 2022 order is modified to not require Summit Carbon to provide the information in Exhibits L1 and L2.
3. The petition to intervene filed by Charles Isenhart on November 1, 2022, is granted.
4. The petition to intervene filed by the Kossuth County Board of Supervisors on November 21, 2022, is granted.

**UTILITIES BOARD**

**Geri Huser** Date: 2023.02.10  
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**Richard Lozier** Date: 2023.02.09  
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**ATTEST:**

**Louis Vander Streek** Louis Vander Streek  
2023.02.10 13:04:06  
-06'00'

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**Josh Byrnes** Date: 2023.02.09  
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Dated at Des Moines, Iowa, this 10th day of February, 2023.